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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/661,402

09/12/2003

Andrew Vaillant

16051-7US CC

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12/15/2006

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EXAMINER

HURT, SHARON L

ART UNIT

PAPER NUMBER

1648

DATE MAILED: 12/15/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<p align="center">Office Action Summary</p>	Application No. 10/661,402	Applicant(s) VAILLANT ET AL.	
	Examiner Sharon Hurt	Art Unit 1648	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 September 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) _____ is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>May 8, 2006</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

Amendments to the claims filed September 8, 2006 are acknowledged. Claims 1-51 and 57 are withdrawn. Claim 52 is currently amended. Claims 52-56 are pending and under examination.

Declaration

The declaration under 37 CFR 1.132 filed August 14, 2006 is sufficient to overcome the rejection of claims 28 and 29 based upon enablement.

Response to Arguments

Rejections Withdrawn

The rejection of Claims 52-56 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter of the claimed invention is **withdrawn** pursuant to applicant's amendment.

Applicant's arguments, see pages 8-9, filed September 8, 2006, with respect to 35 U.S.C. § 112, first paragraph have been fully considered and are persuasive. The rejection of claims 52-56 for failing to comply with written description has been **withdrawn**.

The rejection of Claims 52-56 under 35 U.S.C. § 112, first paragraph as failing to provide an enabling disclosure is **withdrawn** pursuant to the Declaration filed September 8, 2006.

Rejections Maintained

The rejection of Claims 52-56 under 35 U.S.C. 102(e) as being anticipated by Peyman et al. (US Patent No. 6,013,639) (hereinafter Peyman) is **maintained**. Peyman's teachings are of record. Applicant's arguments have been fully considered but they are not persuasive.

Applicant argues that claim 52 has been amended to define that the antiviral activity of the claimed oligonucleotides occurs principally by a non-sequence complementary mode of action. Applicant argues that Peyman "teaches that the efficacy of the tested oligonucleotides is dependent on the presence of a 10 guanines extension at each extremity of the oligonucleotide". Applicant also argues that these oligonucleotides adopt a "G quartet" structure, which is not required in the present invention.

Firstly, regarding the 'G-quartet structure', applicant is arguing features which are not in the claims, as the absence of such a structure is not in the present claims. Furthermore, Peyman teaches administering the same oligonucleotides as those of the claimed invention (oligonucleotides at least 10 nucleotides in length) and teaches administering the oligonucleotides to the same patient population as the present invention (either normal subjects for prophylaxis against viral infection or patients with viral infection for treating the disease). Therefore, since Peyman teaches administering the same composition to the same patient population, the method of Peyman anticipates the claimed invention. The sequence independent mode of action is inherent to the oligonucleotide compositions of Peyman, which have antiviral activity. Furthermore, Peyman teaches that multiple oligonucleotides of distinct sequences all had antiviral activity. This is additional evidence that the oligonucleotides taught by inherently

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possess antiviral properties, which are independent of the specific sequence of the oligonucleotide.

The rejection of claims 52-56 on the ground of nonstatutory double patenting over claims 53-57 of copending Application No. 10/969,812 is **maintained**. Applicant's statement of intention to file a terminal disclaimer upon indication of allowable subject matter is noted. This is a provisional double patenting rejection since the conflicting claims have not yet been patented.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sharon Hurt whose telephone number is 571-272-3334. The examiner can normally be reached on M-F 8:00 - 4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bruce Campell can be reached on 571-272-0974. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Sharon Hurt

December 6, 2006


BRENDA BRUMBACK
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